16-388

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~311~~ 46

AMERICA C. BEDFORD AND JOHN R. BEDFORD, APPELLANTS,

vs.

G. W. BURTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 10, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 311.

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vs.

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1 UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

At a circuit court of the United States, begun and held at the Federal court-room at Nashville, within and for the district aforesaid, on the third Monday, being the 21st day of October, A. D. 1878, and of the Independence of the United States the 103d year.

Present, the hon'l John Baxter, judge, &c.

The following proceedings were had, to wit:

G. W. BURTON
vs.
AMERICA C. BEDFORD AND JOHN R. BEDFORD.

The original bill of complaint was filed in this cause on the 16th September, 1878, and is in words and figures following:

Circuit court of the United States for the middle district of Tennessee.

The bill of complaint of G. W. Burton, a citizen of the State of Kentucky, filed in the circuit court of the United States for the middle district of Tennessee, against America C. Bedford and her husband, John R. Bedford, citizens of the middle district of Tennessee.

2 To the honorable the judges holding the circuit court of United States:

Humbly complaining, your orator, G. W. Burton, a citizen of the State of Kentucky, respectfully represents and shows to your honors, that heretofore, to wit, on the 16th day of February, 1872, he sold and conveyed to the defendant, America C. Bedford, a tract of land lying and being in the county of Rutherford and bounded as follows: Beginning at a dogwood, H. Jenkins' corner; running thence south 7½° east with his line 60 poles to the north edge of the Murfreesboro' and Wilkinson X-road turnpike; thence with the old road and Giles Harding line south 74° east 39 poles, north 86½° east 30 poles, south 75° east 37 poles, south 77° east 31 poles, north 75½° east 34½ poles, south 86° east 79 poles, to Giles Harding's corner, in the middle of said turnpike; thence north 2° west, with Cowan's line 111½ poles to a stake, H. Jenkins' corner; thence 83½° with his line 252 poles to the beginning.

Said land lies in the 9th civil district of Rutherford County, Tenn., and contains 142 acres more or less.

3 A copy of the deed of conveyance is herewith filed, marked Ex. A.

In part payment and consideration the defendant America C. Bedford made and executed two promissory notes, each dated on the 16th day of February, 1872, and one due on the first day of January, 1874, and the other due on the first day of January, 1875, each in the sum of twenty-five hundred dollars, payable to complainant, and each bearing interest at the rate of ten per cent. per annum from the first day of January, 1872, and by express terms of the deed a lien was retained on the land for the payment of the unpaid purchase-money; that on the 29th day of May, 1872, the sum of twelve hundred dollars, and on the 16th day of March, 1874, the sum of sixteen hundred dollars was paid thereon, leaving the balance of the two notes due and unpaid together with the interest thereon.

And they further represent and show to your honors that the de-

fendant America C. is a married woman, and has for her husband J. R. Bedford.

The notes are here filed, marked Ex. B & C. The complainant
4 is advised that he is relea[illegible]vable honors' court, that the defendants' acts and doings are contrary to equity and good conscience, and for inasmuch as your orator can only have complete relief in your honors' court he prays to be permitted to file this bill to enforce his vendor's lien and have said land sold free from the equity of redemption for the payment of the unpaid purchase-money.

To the end, therefore, that the defendants may show why your orator should not have the relief hereby prayed for, and may, upon their separate corporal oaths, and according to the best and utmost of their knowledge, remembrance, and belief, full, true, and perfect answer make to each of the several interrogatories as they are required to answer.

Let America C. Bedford answer if said notes were not given for the purchase of the land herein described.

2. If, by the terms of the conveyance, they are not a lien thereon.

Let J. R. Bedford answer if he is not the husband of said America.

5 And that in addition to the specific relief herein prayed your orator may have such other or further relief in the premises as the nature and circumstances to the honorable court may seem meet. And may it please your honor to grant unto your orator a writ of subpœna, issuing from and under the seal of this court, directed to the defendants, and commanding them on a day certain, therein to be named, and under a certain penalty, to appear in this honorable court, then and there to answer, all and singular, the premises, and to abide such further order, direction, and decree as may be made against them. As in duty bound he will ever pray.

JAMES A. WARDER,
Solicitor.

Exhibit A, referred to in bill.

For the consideration of seven thousand five hundred dollars, paid and to be paid as hereinafter stated, I, George W. Burton, of the city of Louisville, Kentucky, have this day bargained and sold and do hereby transfer and convey to Mrs. America Bedford, of Rutherford County, Tennessee, to be held by her to her sole and separate use,
6 free from the debts of her present or any future husband, the following-described tract of land, situated in Rutherford County, Tennessee, civil district No. 9, containing one hundred and forty-two acres, more or less, and bounded as follows:

Beginning at a dogwood, H. Jenkins' corner; running thence south 7½ east with his line 60 poles to the north edge of the Murfreesboro' and Wilkinson X-roads turnpike; thence with the old road and Giles Harding's line south 74° east 39 poles, north 86¼° east 30 poles, south 75° east 37 poles, south 77° east 31 poles, north 75½° east 34½ poles, south 89° east 79 poles to Giles Harding's corner in the middle of said turnpike; thence north 2° west with Cowan's line 111½ poles to a stake, H. Jenkins' corner; thence 83½° with his line 252 poles to the beginning. To have and to hold the same to s'd America Bedford, her heirs and assigns forever, to her sole and separate use, free from the debts or contracts of her present or any future husband.

I covenant that said land is not encumbered and that I have a good right to convey it.

I further covenant and bind myself and heirs and representatives to forever warrant and defend the title thereto to s'd America Bedford, her heirs and assigns, against the lawful claims of all persons whatever. The consideration for said tract is paid & to be paid as follows, to wit: Twenty-five hundred dollars thereof, which was due the 1st of last January, is paid by said America Bedford conveying to the undersigned a portion of a legacy, given to her by Wm. H. Smith, dec'd, to wit, $2,700 of said legacy, which is regarded as likely to be paid over by his executors about the 1st January, 1873, or soon thereafter. And said America Bedford has executed to the undersigned her two notes, each for two thousand five hundred dollars ($2,500), dated the 1st January, 1872, at which time the land trade was regarded as going into effect, both bearing interest from that date and at the rate of ten per cent. per annum, and due as follows: One due the 1st January, 1874, the other due 1st January, 1875.

It is hereby expressly agreed and understood that a lien is
8 hereby reserved on said tract of land for the payment of the purchase-money as above set forth and until it is paid.

This the 16th February, 1872.

G. W. BURTON.

STATE OF TENNESSEE,
Rutherford County:

Personally appeared before me, Jas. O. Oslin, clerk of the county court of said county, G. W. Burton, the bargainor, with whom I am personally acquainted; that he executed the foregoing instrument for the purposes therein contained.

Witness my hand at office, at Murfreesboro', this 28th day of April, 1872.

JAMES O. OSLIN, *Clerk*,
By J. T. RICHARDSON, *D. C.*

Registered 27th April, 1872.

STATE OF TENNESSEE,
Rutherford County:

I, Hardy Murfree, register of said county, do hereby certify that the foregoing is a true and perfect copy of a deed from G. W. Burton to America Bedford as the same appears of record in my office
9 in book No. 18, page 401.

Witness my hand at office, in Murfreesboro', this 16th day of September, 1878.

HARDY MURFREE, *Register.*

Exhibit B.—Filed Sept. 16, 1878.

$2,500.] On or before the first January, 1874, I promise to pay Dr. George W. Burton twenty-five hundred dollars, with interest thereon at the rate of ten per cent. per annum from the 1st day of last January (January, 1872), from which time this note is to bear interest by agreement.

This the 16th of Feb'y, 1872.

AMERICA C. BEDFORD.
AMERICA C. BEDFORD.

Endorsements.

Received on the within note twelve hundred dollars ($1,200), and the interest on that amount ceases from this date, May 29, 1872.

G. W. BURTON.

Rec'd on the within note sixteen hundred dollars this 16th day of March, 1874.

W. N. DOUGHTY, *Cashier.*

Exhibit C.—Filed Sept. 16, 1878.

10 $2,500.] On or before the 1st day of January, 1875, I promise to pay Dr. George W. Burton twenty-five hundred dollars, with interest at the rate of ten per cent. per annum from the first day of last January (January, 1872), from which time the note is to bear interest.

This the 16th February, 1872.

AMERICA C. BEDFORD.

Subpœna to answer.—Issued Sept. 18, 1878.

Spa. to ans.

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon America C. Bedford and John R. Bedford, if to be found in your district, to be and appear before the circuit court of the United States, in the sixth circuit for the middle district of Tennessee, at the Federal court-room, at Nashville, in said State, on the third Monday in October next, then and there to answer a bill filed on the equity side of the court against them by G. W. Burton to enforce a vendor's lien. Herein fail not, and have then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 18th day of September, in the year of our Lord eighteen hundred and seventy-eight, and of
11 the Independence of the United States the 103rd year.

LEWIS T. BAXTER, *Clerk.*

MEMORANDUM.—The def'ts are required to enter their appearance in the office of the clerk of this court on or before the third Monday of October next and plead answer or demurrer, or the bill will be taken pro confesso and set for hearing ex parte.

LEWIS T. BAXTER, *Clerk.*

Return.

Came to hand day issued and executed in full Sept. 23rd, 1878, by making known to J. R. Bedford, and through him to his wife, Mrs. A. C. Bedford, the contents hereof and delivered copy of same, and also copy of bill.

E. S. WHEAT,
U. S. Marshal.

On November 1st, 1878, a demurrer was filed as follows:

Demurrer.

Came the defendants, America C. and John R. Bedford, and demurs to the bill of complaint, and assigns the following causes of demurrer:

1st. The bill seeks to enforce a vendor's lien under a contract of purchase made by defendant America C. Bedford, who is a feme
12 covert and under the laws of the State of Tennessee incapable of making a valid contract to be enforced against her by the vendor in the courts of the country.

2d. The bill seeks a decree for the balance due on two promissory notes alleged to have been executed by defendant America C. Bedford, a feme covert who is incapable of executing a valid promissory note.

And for other causes that will be assigned upon argument, upon which defendants pray the judgment of this honorable court, and that they be dismissed hence with cost in this behalf expended.

RICE & WADE, *Sol'rs.*

I hereby certify that it is my opinion that the above demurrer is well founded in point of law.

J. D. WADE,
Of Rice & Wade, Sol'rs.

Answer of defendants to original bill.—Filed Nov. 19, 1878.

Ans. to O. bill.

The joint and separate answer of John R. Bedford and his wife, America C. Bedford, defendants, to the bill of complaint of G. W. Burton.

Defendants for answer to so much of said bill as they are advised it is necessary for them to answer, say that they suppose that it is
13 stated in complainant's bill that he sold to respondent America C. Bedford the land described in said bill at the time and at the price stated therein; that so much of the price was paid in cash, and that her notes were executed for the balance, and that she has made the payments on one of said notes, as the endorsements thereon will show; that the balance on said first note and the whole of the second note, with interest thereon, remains unpaid; that the deed was executed to her as stated, and a lien retained for the payment of the purchase-money; and that she was placed in possession of said land, and is still in possession of the same. The respondent further states that at the time of said contract of sale that she was a married woman, the wife of her corespondent, John R. Bedford, and still is such wife of said John R. Bedford. That complainant, well knowing the fact of such marriage and her incapacity to contract, sold to her the land as stated in the bill. Respondents state that by reason of said covertue said contract is void and of no effect, and they ask that it be so declared. And
14 having fully answered, they pray to be dismissed with their costs, &c.

RICE & WADE, *Sol'rs.*

Defendants, John R. and America C. Bedford, makes oath that the

facts stated in the foregoing answer are true to the best of their knowledge, information, and belief.

J. R. BEDFORD.
A. C. BEDFORD.

Sworn and subscribed to before me Nov. 19, 1879.
LEWIS T. BAXTER, *Clerk.*

On Nov. 19, 1878, the defendants filed their cross-bill in words and figures following:

Cross-bill.

To the hon'l John Baxter, judge of the United States circuit court for the middle district of Tennessee:

JOHN R. BEDFORD AND HIS WIFE, AMERICA C. Bedford,
vs.
G. W. BURTON.

The cross-bill of John R. Bedford and his wife, America C. Bedford, citizens of Rutherford County, State of Tennessee, against G. W. Burton, a citizen of the State of Kentucky.

Your orator and oratrix would respectfully show unto your honor that on the 18th day of September, 1878, the defendant, G. W. Burton, filed his original bill in your honor's court, in which it is alleged
15 that on the 16th day of February, 1872, he sold and conveyed to your oratrix, America C. Bedford, a certain tract of land therein described and located in Rutherford County and said State; that in part payment your oratrix executed her two promissory notes, dated on the 16th day of February, 1872, and due on the 1st January, 1874, the other on the 1st January, 1875; each for $2,500, and each bearing interest at the rate of ten per cent. per annum from the 1st January, 1872, and that an express lien was retained to secure the payment of the purchase money. That on the 29th May, 1872, $1,200, and on the 16th March, 1874, $1,600 was paid thereon. And that America C. Bedford was a married woman and the wife of John R. Bedford. The notes are made exhibits to the bill as well as the deed, and the land is asked to be sold free from the equity of redemption, and your oratrix is called upon to answer if she did not execute said notes, and if they are not a lien upon said land described in the bill. Complainants would further state that at the time defendant sold and conveyed the land de-
16 scribed in this O. bill that complainant America C. Bedford was a married woman and the wife of her cocomplainant, John R. Bedford, and is still the wife of said John R. Bedford, all of which the said defendant, G. W. Burton, well knew. That on the 16th February, 1872, the date of said sale and conveyance, your complainant America C. Bedford paid $2,183.70 in cash to said defendant, G. W. Burton, on said purchase. The price that she was to pay for said land was $7,500. The cash payment of $2,183.70 was made as above stated, and she executed her two notes, as stated in the O. bill, for the balance, each for $2,500, and payable in two and three years, with interest at the rate of ten per cent per annum from the 1st of January, 1872, nearly two months anterior to the sale. That complainants have made permanent and lasting improvements upon said place to the value of $500. Said

improvements consists of one servants' house, $40; one barn, $125.00, made in 1872; kitchen and dining-room, made in 1874, $160; 5,000 new cedar rails, 50c. per hundred, $150, made in 1874; new roof to crib and half new roof to stable, $25.00.

17 Complainant America C. Bedford alleges that she was a feme covert at the time of said conveyance to her, and at the time she executed said notes; that the notes are only signed by her and not jointly with her husband, John R. Bedford; that she is informed and believes that said contract of sale and said notes executed for the purchase-money of said land are void because of said coverture; that with the money expended to make the improvements of a permanent nature in said land she has already paid on said land about $5,483.70, the amount of said land being about 142 acres, making something over $39 per acre already paid on said land; she was to give something over $52 per acre; that with interest at ten per cent. per annum on the unpaid purchase-money there remains a balance due on said purchase of between four and five thousand dollars; that complainant in the O. bill asks that said land be sold free from the equity of redemption to satisfy the lien retained for the unpaid purchase-money; that said land so sold would be purchased by G. W. Burton for said unpaid purchase-money, and your complainant, America C. Bedford, will have lost her $5,483.70 paid on said

18 land; that such a sale would be a great & inequitable hardship upon her, and to protect herself from such hardship she is compelled to use all of the defenses the law has conferred upon her as a married woman, and alleges that the entire transaction, the sale of the land and the notes she executed, are null and void because of her coverture and consequent want of capacity to contract, and asks this court to so decree.

Premises considered, complainants pray that said deed executed to complainant America C. Bedford by G. W. Burton be declared null and void and cancelled; that the notes executed by said America C. Bedford to said G. W. Burton and described in the O. bill be declared null and void and of no effect and delivered to complainant America C. Bedford; that the whole transaction be declared null and void and of no effect; that G. W. Burton be declared to be entitled to the land described in his O. bill, and that a writ of possession issue to him to put him in possession of the same; that complainants, John R. Bedford and his wife America C. Bedford, have a decree for amount of

19 money that has been paid by complainant America C. Bedford to said G. W. Burton on said contract of purchase as set forth in his O. bill and this cross-bill, and the price of the permanent improvements made by complainants on said lands, with interest on said amounts from date of payment and from date of improvements. The value of the rents of said land while occupied by complainants to be ascertained by a reference to the clerk of this court, and which rents when so ascertained to be deducted from the amount found due for money paid & improvements made by complainants.

That publication as required by law be made for defendant, G. W. Burton, as he states in his original bill that he is a non-resident of the State of Tennessee, commanding him to appear at the spring or April term, 1879, of this hon. court and make defense to this cross-bill, and for such other further and general relief as to the court may seem meet.

RICE & WADE, *Sol'rs.*

Complainants makes oath that the statements in the foregoing bill are true to the best of their information and belief.

J. R. BEDFORD.
A. C. BEDFORD.

Subscribed & sworn to before me Nov. 19, 1878.

LEWIS T. BAXTER, *Clerk.*

20 *Spa. to ans.*

Spa. to ans. cross-bill issued 19 Nov., 1878, as follows:

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon G. W. Burton, if to be found in your district, to be and and appear before the judges of the circuit court of the United States for the middle district of Tennessee, at the Federal court-room at Nashville in said State on the third Monday in April next, then and there to answer X-bill of John R. and America C. Bedford, filed on the equity side of the docket against him to set aside a conveyance of land and to cancel the notes given in payment thereof.

Herein fail not, and have then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 19th day of November, in the year of our Lord 1878, and of the Independence of the United States the 103d.

LEWIS T. BAXTER, *Clerk.*

MEMORANDUM.—The defendant is required to enter his appearance before the clerk of this court on or before the 1st Monday in January, 1879, and plead answer or demur', or the bill will be taken pro confesso and set for hearing ex parte.

LEWIS T. BAXTER, *Clerk.*

21 Endorsement.

I acknowledge service of process and receipt of copy of bill Nov. 21, 1878.

J. A. WARDER, *Sol'r for Def't.*

Demurrer to cross-bill filed Jan'y 8, 1879, as follows:

JOHN R. BEDFORD & AMERICA C. BEDFORD
vs.
G. W. BURTON.

The demurrer of G. W. Burton to the cross-bill of John R. and America C. Bedford.

The defendant by protestation not confessing or acknowledging any or all of the matters and things in said bill of complaint to be true in such manner and form thereby set forth & alleged, doth thereto, and for causes of demurrer showeth that the said complainant hath not by their said bill made such a case as in a court of equity entitled them to relief touching the charges therein set out, and for cause

of demurrer saith, that it appears by complainants' own showing that the tract of land was purchased on the 16th Feb'y, 1872, and from that time forward has been in the possession of the complainants,
22 and there is no allegation there that the same was not purchased by and with the assent of the husband, nor is there any allegation that he upon being advised of said purchase dissented therefrom, but on the contrary, that they jointly have used and occupied the same, and he has assented thereto. Wherefore, and for divers other good causes of demurrer appearing therein, the defendant doth demur to said bill of complaint, and humbly prays the judgment of the honorable court whether he shall be compelled to make other and further demurrer to said bill, and prays to be hence dismissed with his reasonable cost.

JAMES A. WARDER, *Sol'r.*

I certify that in my opinion the foregoing demurrer of G. W. Burton, defendant, is well founded in law, and proper to be filed in said cause.

JAS. A. WARDER.
Sol'r and of Counsel for Def't.

James A. Warder, being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint, and the same is not interposed for the purpose of delaying said suit or any proceedings therein.

JAMES A. WARDER.

Subscribed and sworn to before me Jan'y 8, 1879.
LEWIS T. BAXTER, *Clerk.*

23 On Nov. 13, 1878, the following interlocutory order was entered upon the minutes of said court:

G. W. BURTON
v.
J. R. AND AMERICA C. BEDFORD. } No. 2435.

Be it remembered that this cause came on to be heard on this the 13th day of November, 1878, before the hon'l C. F. Trigg, judge, &c., on the bill of complaint and demurrer thereto by defendant, when the court is pleased to overrule the demurrer with leave to defendants to rely upon the same matters of defense in an answer and cross-bill which the defendants are authorized to file.

It is therefore ordered, adjudged, and decreed that the demurrer be overruled, and that defendants file their answer and cross-bill.

On the 8th day of February, 1879, a final decree was rendered in words and figures following:

G. W. BURTON
v.
AMERICA C. & JOHN R. BEDFORD.

Be it remembered that this cause came on to be heard before the hon'l John Baxter, circuit judge, on the demurrer of the com-
24 plainant, G. W. Burton, to the cross-bill of America C. and John R. Bedford, and in consideration thereof, the court is of the opin

ion that the demurrer is well taken, and doth allow the same, and the cross-bill is dismissed. And then the cause came on to be heard upon the original bill, the exhibits, and the answer of the defendants, and it appearing to the satisfaction of the court that on the 27th day of April, 1872, the complainant sold and conveyed by deed with covenants of general warranty to the defendant America C. Bedford, to her sole and separate use, a tract of land mentioned in the pleadings, and it further appearing that the defendants entered into the possession thereof, and still continue to occupy the same, and it not being alleged or shown that the husband dissented therefrom, and in the absence of proof or allegation his assent being presumed, the court is of opinion that the defense of coverture is no sufficient defense thereto, doth decree accordingly that the contract is valid and binding, and cannot now be rescinded. And it further appearing to the court that as part consideration for said tract of land the defendant America C.
25 executed and delivered to the complainant her two several promissory notes, dated the 16th day of February, 1872, each for the sum of $2,500, each drawing interest from the 1st day of January, 1872; one due on the 1st day of January, 1874, and the other due the 1st day of January, 1875, each drawing interest at the rate of ten per cent. under the statute laws of Tennessee; and it further appearing that by express reservation in the deed a lien is retained on the land for the payment of these notes, and that the same remain due and unpaid, with the exception of twelve hundred dollars paid thereon on the 29th day of May, 1872, and the further sum of sixteen hundred dollars, paid on the 16th day of March, 1874, leaving the sum of $4,543.61, the principal and interest, remaining due thereon:

The court is pleased to order, adjudge, and decree that the complainant is not entitled to a personal judgment against the defendant America C. Bedford, but that the aforesaid sum of money is, in equity, a lien on said land, and the complainant has the right to sell the same for the satisfaction thereof. The defendants will be allowed forty
26 days in which to pay the money into court, and in default of the payment the clerk of this court, Lewis T. Baxter, is appointed special commissioner to sell the land described in the pleadings. He will advertise the same, according to law, and sell the same on a credit of six and twelve months, free from the equity of redemption, taking notes with approved security from the purchaser, and report his action to the next term of this court; until the coming in of which report all other equities are reserved. And the defendants being dissatisfied with the action of the court in sustaining the demurrer to, and dismissing the cross-bill, as well as the decree in the cause, pray an appeal from the decree sustaining the demurrer and dismissing the cross-bill, and also from the decree on the original bill, to the next term of the Supreme Court of the United States; which is granted them upon their giving bond in the sum of five hundred dollars ($500) and security as required by law, to be approved by the clerk, within thirty days from the date hereof.

27 MIDDLE DISTRICT OF TENNESSEE:

I, Lewis T. Baxter, clerk of the circuit court of the United true States for the said district, do hereby certify that the foregoing is a and perfect transcript of the record and proceedings had in said court in the cause of G. W. Burton vs. America C. and John R. Bedford, and of the cross-bill filed in said cause of America C. & John R. Bedford against G. W. Burton, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Nashville, this 21st day of February, 1879.

[SEAL.] LEWIS T. BAXTER, *Clk.*

This is to certify that John R. Bedford has this day paid me thirty-three $\frac{40}{100}$ dollars ($33.40) in full of clerk's & marshal's fees. Feb'y 21, 1879.

LEWIS T. BAXTER, *Clk.*

28 *Appeal bond.*

Know all men by these presents that we, America C. Bedford and John R. Bedford, principals, and G. W. Scalleon & Thomas Scalleon, securities *securities*, are held and firmly bound unto G. W. Burton in the full and just sum of five hundred dollars, to be paid to the said G. W. Burton, his executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 8th day of February, 1879.

Whereas the above-named America C. Bedford and John R. Bedford have taken an appeal to the Supreme Court of the United States to reverse a decree rendered in the cause of G. W. Burton against said America C. Bedford and John R. Bedford by the circuit court of the United States for the middle district of Tennessee:

Now, therefore, the condition of the above obligation is such that if the above-named America C. Bedford and John R. Bedford shall prosecute their said appeal with effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void;

29 otherwise to remain in full force and effect.

A. C. BEDFORD.
JOHN R. BEDFORD.
G. W. SCALLORN.
THOS. SCALLORN.

STATE OF TENNESSEE,
Rutherford County:

I, J. W. Sparks, clerk & master for said county, certify that the foregoing bond is a good for the amount therein specified.

Feb'y 7, 1879.

J. W. SPARKS,
Clerk & Master.

Accepted and approved.

LEWIS T. BAXTER, *Clk.*

(Indorsed:) 2436. G. W. Burton vs. America C. Bedford, Jno. R. Bedford. Filed Feb'y 8, 1879. Lewis T. Baxter, cl'k.

(Indorsement on cover:) No. 311. America C. Bedford and John R. Bedford, appellants, vs. G. W. Burton. M. Tennessee C. C. U. S. Filed 10th October, 1879.

BRIEF OF APPELLANT IN THE UNITED STATES SUPREME COURT.

Case No. 311.

AMERICA C. BEDFORD,
and
JOHN R. BEDFORD,
} Appellants.

vs.

G. W. BURTON.

On the 15th of September, 1878, G. W. Burton filed his Original Bill in the Circuit Court of the U. S., for the Middle District of Tennessee, to enforce a vendor's lien, which he alleged existed upon a tract of land which he sold to appellant, America C. Bedford, *feme covert*, without separate property, on the 10th of February, 1872, for $7,500; $2,500 of said sum to be paid in cash, and she executed her two notes for 2,500 each, to bear interest at the rate of ten per cent. per annum, from the 1st day of January, 1872, one note due on the 1st of January, 1874, and the other due on the 1st of January, 1875. Said notes were only signed by appellant, America C. Bedford, her husband not joining in the execution of the notes. On the 29th of May, 1872, America C. Bedford paid $1,200 on the first note, to G. W. Burton, and on the 10th of March, 1874, she paid $1,100, to his agent, W. N. Doughty. On November 1st, 1878, appellants filed demurrer to Original Bill, and alleged as a ground of demurrer the incapacity of America C. Bedford, because of coverture to make such a contract, which was overruled on the 13th of November, 1878, with leave to incorporate said defense in answer and cross-bill. On the 19th of November, 1878, appellants filed their answer to the Original Bill, and on the same day filed their cross-bill in the case; alleging the coverture of said America C. Bedford, and her incapacity under the laws of

Tennessee to make a valid and binding contract, and prayed for that reason that the deed from Burton to herself, and her notes to Burton be declared null and void; that Burton be declared to be entitled to a writ of possession for the land, the notes be delivered to appellant, America C. Bedford, and the entire transaction be declared null and void; that the amounts paid by said America C. Bedford to said Burton, with the value of permanent improvements, be delivered to appellants, and that they be charged rent for the time they had occupied said place. On January 8th, 1879, a demurrer was filed to said cross-bill, which demurrer was sustained, and cross-bill dismissed, and on the 8th of February, 1872, a final decree was rendered on the Original Bill, exhibits and answer thereto, giving ten per cent. interest on said notes to date of decree. The Court refusing to give a personal decree against appellant, America C. Bedford, because of coverture and incapacity to contract, but declared the amount due a lien on the land, which was ordered to be sold for its payment, but no decree over against America C. Bedford. From which final decree, as well as the decree sustaining the demurrer and dismissing the cross-bill, the appellants prayed an appeal to the next term of the Supreme Court of the United States.

The principles of the common law prevail in Tennessee as to the disabilities of coverture, and therefore she is incapacitated to make any contract whatever. This being so, the demurrer to the cross-bill should have been overruled, and the prayer of the cross-bill granted, which asked that the transaction be held null and void, and all parties restored to their original rights. This would have been equity. As the appellee, Burton, knew at the time he sold the land, that he was dealing with a *feme covert*, a person incapable of making a contract, and that any contract entered into with her was invalid, he is not in an attitude to seriously object to a decree holding the entire transaction null and void, and placing the parties in *statu quo*.

While the decree refuses to give a personal judgment against America C. Bedford, because of coverture, yet the decree has the same effect upon her rights, as if it were held that she had the capacity to make a contract, as it gives the appellee absolutely, the money he has obtained from appellant, under a contract that the Court refuses to enforce by a personal judgment, and in ad-

dition declares that the remainder of the money due on an invalid contract is a lien on the land that had been transferred by an invalid deed to appellant, America C. Bedford. In other words, said decree is equivalent to holding that under the common law, a married woman could make a valid contract, otherwise the decree would not have anything upon which to rest, as it could not be based upon an invalid contract, and when the *feme covert* comes forward, and asks by cross-bill, that the entire transaction be held null and void, and asks that the land be returned to Burton, the appellee, it knocks the other plank from under the decree, when it is attempted to base the decree upon the ground, that it would be inequitable to permit the *feme covert* to retain the property and not pay for it. It is insisted that this offer to return the property destroys all presumptive liens that equity raises in cases where a party obtains possession of another's land, and refuses either to restore the land or pay for it. Would it not be more thoroughly in accord with reason, when the party under an invalid contract, who has the advantage, asks that all parties be placed in *statu quo*, to grant the prayer, than refuse it, and hold that although the contract is invalid, yet it shall be made the basis of a decree, and the invalid contract shall be conclusive evidence of the value of the thing proposed to be sold, and the amount so ascertained from such a contract, shall determine the amount of the decree, and it shall be declared to be a lien upon the land, in favor of the vendor; which is necessary, because the void deed has vested the title in the vendee, and in order to relieve the vendor, it is necessary to declare a lien in his favor on his own land, and order its sale to pay the purchase money of a sale that never had a legal existence, when all of these legal inconsistencies could be avoided by a decree holding the entire transaction null and void, and for a restoration of the parties to their original rights.

It is insisted that the final decree is erroneous, because it gives ten per cent. interest on the notes of a *feme covert*. Ten per cent. is, or was, the conventional rate of interest, and six per cent. the interest given where the contract is silent as to interest. Section 1944*a* of the Code of Tennessee, which is the substance of sec. 1, chap. 69 of the Acts of 1869–70, is in words as follows: "Hereafter it shall be lawful to *contract* for any rate of interest

not exceeding ten per cent. per annum; provided that the rate of interest be in writing, and expressed in the face of the instrument creating the debt or obligation, and when judgment or decree shall be rendered on such written contract, it shall bear the same rate of interest as the written instrument upon which the judgment or decree is based, and shall be so expressed in the judgment or decree, and endorsed on the execution issued thereon." Section 1944*b* is in the following words: "The rate of interest now established by law shall continue equal and uniform throughout the State as heretofore, and no greater rate of interest than six per cent. per annum shall be received on any contract or obligation, unless *agreed* on by the parties, and reduced to writing in the face of the contract or obligation, according to the provisions of the first section of this act."

In 3rd Humphrey Tenn. R., p. 80, the Supreme Court of the State of Tennessee holds that the note of a *feme covert* is absolutely void, and a general demurrer will lie to the declaration, if it appear on the face of the declaration that the maker of the note was a *feme covert*. See also 1st Tennessee Chan. R[illegible]. 591, and 2nd ib. 771. This being the law of the State, appellant, America C. Bedford, could not execute a valid promissory note or make a contract; and as a greater rate of interest than six per cent. had to be contracted for, and as America C. Bedford was incapable of making a contract for a greater rate of interest than six per cent., it follows that the lower court erred in giving a decree for interest at the rate of ten per cent. per annum. If charged with interest at all, it should have been at the rate of six per cent. per annum.

R. McP. Smith.

SUPREME COURT OF THE UNITED STATES.

AMERICA C. BEDFORD AND JOHN R. BEDFORD

vs.

G. W. BURTON.

Brief on Behalf of G. W. Burton.

On the 16th day of February, 1872, G. W. Burton sold and conveyed to the appellant, America C. Bedford, the tract of land described in the bill, containing about 142 acres, at the price of $7,500. The said America C paid $2,700 by assigning to the said Burton a legacy, or portion of a legacy, given her by the last will and testament of one Wm. H. Smith. To secure the balance of the purchase money, she executed her two promissory notes for $2,500 each, and due on the 1st day of January, 1874 and 1875, respectively, and bearing interest from date at the rate of 10 per centum per annum. A lien was expressly reserved by the deed to secure the payment of the purchase money.

(See printed record, p. 3.)

On the 16th of September, 1878, a large amount of the purchase money remaining unpaid, G. W. Burton, a citizen of Kentucky, filed his bill against America C. Bedford and her husband, John R. Bedford, in the Circuit Court for the Middle District of Tennessee, to enforce the lien for said

purchase money so reserved in the deed as aforesaid, so personal judgment against defendants was asked. The defendants demurred to the bill and assigned the following causes of demurrer:

First. The bill seeks to enforce a vendor's lien under a contract of purchase made by defendant, America C. Bedford, who is a femme covert, and under the laws of the State of Tennessee, incapable of making a valid contract to be enforced against her by the vendor in the courts of the country.

Second. The bill seeks a decree for the balance due on two promissory notes alleged to have been executed by defendant, America C. Bedford, a femme covert, who is incapable of executing a valid promissory note.

(See p. 5 of printed record.)

The Court overruled the demurrer, but granted "leave to defendants to rely upon the same matters of defense in an answer and cross-bill which the defendants are authorized to file."

(See p. 9 of printed record.)

The answer and cross-bill were filed accordingly; and to the cross-bill G. W. Burton, the defendant, thereto demurred.

The cause was finally heard on the 8th day of February, 1879, before the Honorable John Baxter, Circuit Judge. The Court allowed the demurrer to the cross-bill and dismissed the same. The cause was then heard upon the bill and answer, and the exhibits, when the Court ascertained that there was due of purchase money $4,543.61, principal and interest to date of the decree. The Court declined to give a personal judgment against Mrs. Bedford, she being a married woman, but decreed that the purchase money was

a lien on the land, and directed the land to be sold to satisfy the sum ascertained to be due as above, unless the defendants paid the money into the Court within forty days. From this decree Bedford and wife have appealed to this Honorable Court.

From this statement it is seen that the sole contention of America C. Bedford is that she has the right to rescind the contract because of her coverture alone.

A sale of land to a femme covert, though not to her separate use, is not void.

In the case of *Gordon* vs. *Haywood*, 2 N. H., the Court said:

> "The only remaining question is whether the subsequent conveyances were in form valid? The deed from P. to Sally Smith, though a femme covert, was with the assent of both her and her husband, because afterwards they both undertook to convey under it. The title to the land, therefore, became legally vested in her."

In the case of *Leach* vs. *Hayes*, 45 N. H., 364, the following language is used:

> "By the conveyance the husband acquired an estate in the land at least during the marriage, and by his answer he seems to have claimed and enjoyed it; and with a knowledge, too, of the manner in which it was acquired, and the securities attempted to be made, at the execution of which he was present. Under these circumstances, neither he nor the wife can, in equity and good conscience, continue to hold the land without paying the balance due the plaintiff, which is substantially a part of the price."

In the case of *Cowton* vs. *Wetherbam*, 54 Penn. St., 302, it is declared—

> "A conveyance to a married woman is good, and if the land is encumbered it passes to her subject to the encumbrance."

In the case of *Coolidge* vs. *Smith*, 129 Mass., 554, the question turned upon the right of the husband to act as the agent of the wife in the purchase of a tract of land. The record showed that, while she did not have knowledge of the transaction at the time, that "soon after the deed was put on record she claimed to be the owner of the property, and there was evidence tending to show not only that she knew of the existence of the mortgage, but had paid interest upon the mortgage debt." Accordingly the transaction was held good.

> "It is no objection to a woman being a grantee of lands from a stranger that she is a femme covert, unless her husband object by some express dissent; the law always presuming his assent unless the contrary be shown."
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> Washburn on Real Property, top p. 316;
>
> [redacted];
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> Schouler's Domestic Relations, p. 153.
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> "Married women over the age of twenty-one years, owing the fee or other legal or equitable interest or estate in real estate, shall have the same powers of disposition, by will, deed, or otherwise, as are possessed by femmes sole or unmarried women."
>
> Code of Tennessee, Sec. 2486.

To say that a married woman may dispose of her real estate, but cannot be compelled to pay for it, or rather that the vendor cannot enforce his lien for the purchase money, is to vest her with rights superior to those of a femme sole —the right to dispose of that which she was incapable of purchasing or holding.

Under the common law a party incapable of becoming a grantor may, nevertheless, be a grantee; the validity of the conveyance depending upon the competency alone of the grantor. Infants and married women may alike be vested with title to real estate.

In the case of *Jackson* vs. *Rutledge*, reported in 3 B. J. Lea, p. 626, it is held by the Supreme Court of Tennessee that—

> "If a married woman buy land, partly for cash and partly on time, and accept a deed of conveyance to her separate use, retaining a lien for the time instalments, she cannot have the money which she has paid refunded merely because of her coverture, and the lien reserved for the payment of the purchase money may be enforced in equity."

This decision was made in 1879. The Court had decided the same question in the same way in 1874.

Willingham vs. *Leake*, 7 Jere. Baxter, 453.

It is thus seen that the decree of the Circuit Court is sustained by the uniform rulings of the Supreme Court of Tennessee, where the land lies and where the contract was made.

I do not maintain that these cases furnish a rule of decision for this Honorable Court, since they are not grounded upon any statute of Tennessee, but merely apply general principles of equity jurisprudence. I venture to suggest to the Court, however, that in *Jackson* vs. *Rutledge supra*, the Judge who delivers the opinion of the Court cites several cases from other courts as sustaining the conclusion arrived at. I am aware of no conflicting decision, and have found none in the very limited time in which I have been compelled to prepare this brief.